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 8 UNITED STATES OF AMERICA

9 UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA
 11 SAN FRANCISCO DIVISION

12 OLLIE DUNLAP, III,)	No. C 08-05412 EMC
13 Plaintiff,)	
14 v.)	STIPULATION TO DISMISS
15 UNITED STATES OF AMERICA,)	COMPLAINT WITHOUT PREJUDICE;
16 Defendant.)	[PROPOSED] ORDER
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17)))

18 Parties stipulate to the following, subject to the approval of the Court:

19 WHEREAS, on June 6, 2008, plaintiff Ollie Dunlap, III, filed a medical malpractice
 20 complaint in the San Francisco County Superior Court seeking damages from Philip A. Starr,
 21 M.D. ("Dr. Starr"), and Nader Sanai, M.D. ("Dr. Sanai") for negligence;

22 WHEREAS, on August 26, 2008, plaintiff filed an administrative claim with the United
 23 States Department of Veterans Affairs concerning the incidents alleged in the complaint in this
 24 action;

25 WHEREAS, on December 2, 2008, the state court action was removed to federal court;

26 WHEREAS, on December 5, 2008, the United States was substituted as the party
 27 defendant for Dr. Starr and Dr. Sanai pursuant to 28 U.S.C. § 2679(d);

28 WHEREAS, the complaint in this action is premature pursuant to 28 U.S.C. § 2675(a)

STIPULATION TO DISMISS COMPLAINT WITHOUT PREJUDICE; [PROPOSED] ORDER
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1 because the administrative claim has not been finally denied in writing and six months have not
 2 passed since its filing;

3 THEREFORE, Plaintiff's complaint in this action is hereby dismissed without prejudice,
 4 so that Plaintiff may pursue administrative remedies under the Federal Tort Claims Act. The
 5 parties agree that this dismissal is without prejudice to Plaintiff's refiling this action after
 6 Plaintiff has properly exhausted said administrative remedies.

7
 8 DATED: December 10, 2008

Robert E. Breecker
 9 ROBERT E. BREECKER
 Attorney for Plaintiff

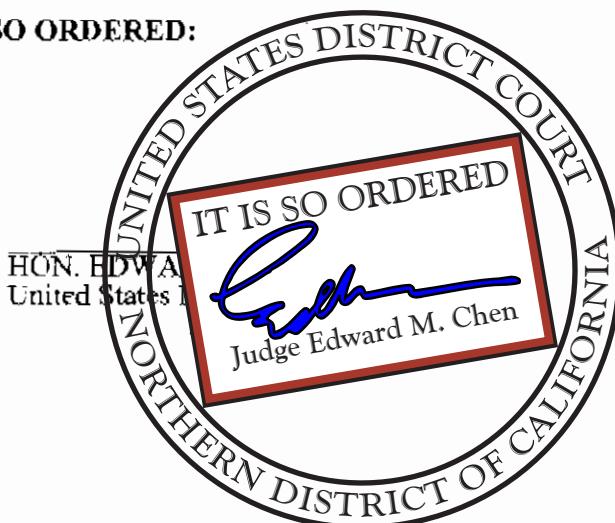
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 11 JOSEPH P. RUSSONIELLO
 United States Attorney

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 13 DATED: 12/11/08

Neill T. Tseng
 14 NEILL T. TSENG
 Assistant United States Attorney
 15 Attorneys for Federal Defendant

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 17 PURSUANT TO STIPULATION, IT IS SO ORDERED:

18
 19 DATED: 12/17/08



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 21 STIPULATION TO DISMISS COMPLAINT WITHOUT PREJUDICE; [PROPOSED] ORDER
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